

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07-CR-33-11**

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Vs. |) | ORDER |
| |) | |
| OTIS RORIE, JR., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

THIS MATTER came on to be heard before the court, pursuant to a motion filed by the defendant entitled “Defendant’s Motion for Release Pending Sentencing” (#160). The undersigned had previously considered the issue of the detention of the defendant on April 27, 2007 and had entered a written order detaining the defendant on May 7, 2007. The undersigned has considered the motion of the defendant as a motion requesting that the court reconsider the issue of the release of the defendant pursuant to 18 U.S.C. § 3142(f)(2). At the call of this matter on for hearing the defendant was present with his counsel, Gregory A. Newman and the Government was present through Assistant United States Attorney, Richard Edwards and from the evidence offered, the court makes the following findings:

Findings: The undersigned incorporates by reference the findings previously entered in the written order of detention filed on May 7, 2007 and the addendum attached thereto as if fully set forth therein.

Evidence was presented by the defendant through the defendant’s own testimony.

The defendant testified that he has obtained a promise of employment from Tyson Foods located in Wilkesboro, NC. It is the plan of the defendant to reside with Hazel Turner and Catherine Largen in the Morganton community. The defendant desires to be released so that he can have an opportunity to watch his two sons play sports. His older son is a senior at Western Carolina University where he is a member of the football team. He has a younger son who is a senior at Freedom High School where he plays basketball.

Discussion: The undersigned has reconsidered and reviewed the previous action of this court in detaining the defendant. A reexamination of the criminal record of the defendant shows that in addition to the three felonies set forth in this court's pretrial order, the defendant has an additional conviction of possession with intent to sell and deliver cocaine that occurred on January 3, 1996. As a result, the criminal record of the defendant shows that he has four felony convictions involving controlled substances; three of them involving the sale and delivery of cocaine.

A further examination of the criminal record of the defendant shows that he was convicted of abandonment and non-support of a child on November 28, 1990. Considering the time of the conviction and the age of the defendant's child that is playing football at Western Carolina University, the court considers that in all likelihood this charge and conviction related to that child.

The undersigned has further examined the court file in this matter and has found that the Government has filed a notice (#88) on May 22, 2007, pursuant to Title 21 U.S.C. § 851

giving notice that the defendant has a previous conviction for possession with intent to sell and deliver cocaine in Burke County, NC.

After reconsidering this court's previous order and considering the evidence of the defendant, the court must find by a clear and convincing evidence that the release of the defendant would create a danger to any other person or the community. The defendant has four previous felony convictions, all involving the sale or storage of controlled substances. The defendant is facing what appears to be a minimum sentence of twenty years if he is found guilty of these charges which are now pending. The testimony provided by the defendant does not show a change of circumstances other than the fact that the defendant has now hopefully obtained employment. This is not a change of circumstance that would have such great weight as would entitle the defendant to be released.

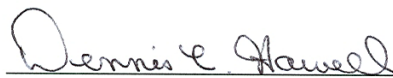
The undersigned also considers that the release of the defendant would create a risk of flight on the part of the defendant in as much as the defendant will be facing a charge for which he will receive a sentence, if convicted, of at least a twenty year period of incarceration.

Based upon the foregoing, the undersigned finds by clear and convincing evidence that the defendant's release would create a risk and danger to any other person or the community as further finds by a preponderance of the evidence that the release of the defendant would create a risk of flight on his part.

ORDER

WHEREFORE, IT IS **ORDERED** that the defendant's motion entitled "Defendant's Motion for Release Pending Sentencing" (#160) is hereby **DENIED** and the defendant is to continue to be detained pending further orders of the court.

Signed: September 5, 2007



Dennis L. Howell
United States Magistrate Judge

